



Federal Communications Commission
Washington, D.C. 20554

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DA 18-915

Small Entity Compliance Guide

Restoring Internet Freedom

FCC 17-166
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This Guide is prepared in accordance with the requirements of Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It is intended to help small entities—small businesses, small organizations (non-profits), and small governmental jurisdictions—comply with the revised rules adopted in the above-referenced Federal Communications Commission (FCC or Commission) rulemaking dockets. This Guide is not intended to replace or supersede these rules, but to facilitate compliance with the rules. Although we have attempted to cover all parts of the rules that might be especially important to small entities, the coverage may not be exhaustive. This Guide cannot anticipate all situations in which the rules apply. Furthermore, the Commission retains the discretion to adopt case-by-case approaches, where appropriate, that may differ from this Guide. Any decision regarding a particular small entity will be based on the statute and any relevant rules.

In any civil or administrative action against a small entity for a violation of rules, the content of the Small Entity Compliance Guide may be considered as evidence of the reasonableness or appropriateness of proposed fines, penalties or damages. Interested parties are free to file comments regarding this Guide and the appropriateness of its application to a particular situation. The FCC will then consider whether the recommendations or interpretations in the Guide are appropriate in that situation. The FCC may decide to revise this Guide without public notice to reflect changes in the FCC's approach to implementing a rule, or it may clarify or update the text of the Guide. Direct your comments and recommendations, or calls for further assistance, to the FCC's Consumer Center:

1-888-CALL-FCC (1-888-225-5322)
TTY: 1-888-TELL-FCC (1-888-835-5322)
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I. OBJECTIVES OF THE PROCEEDING

The purpose of the *Restoring Internet Freedom Order* is to restore the light-touch regulatory framework under which the Internet grew and thrived, thereby encouraging investment in broadband deployment and innovative Internet-based services.

For nearly two decades, the Internet grew and flourished under a light-touch, bipartisan regulatory framework, when broadband Internet access service was classified as an information service. However, in 2015, the Federal Communications Commission (Commission) reclassified broadband Internet access service as a telecommunications service under Title II of the Communications Act, applying to the Internet a public utility-style regulatory scheme designed in the 1930s for the Ma Bell telephone monopoly (*Title II Order*).

The *Restoring Internet Freedom Order* restores the light-touch regulation of broadband Internet access service that prevailed for most of the history of the modern Internet. The *Restoring Internet Freedom Order* includes a transparency rule that will require providers of broadband Internet access service, or Internet service providers (ISPs), to disclose any blocking, throttling, paid prioritization, or affiliated prioritization to the public and the Commission. The *Restoring Internet Freedom Order* eliminates the *Title II Order*'s conduct rules, concluding the cost of those rules outweigh their benefits.

II. COMPLIANCE REQUIREMENTS

In the *Restoring Internet Freedom Order*, the Commission revised the Transparency Rule [47 C.F.R. § 8.1(a)]. The transparency rule requires all ISPs, regardless of size or other characteristics, to disclose their network management practices, performance characteristics, and commercial terms.

Transparency Rule [47 C.F.R. § 8.1(a)]

- The transparency rule requires all providers of broadband Internet access services to “publicly disclose accurate information regarding the network management practices, performance characteristics, and commercial terms of its broadband internet access services sufficient to enable consumers to make informed choices regarding the purchase and use of such services and entrepreneurs and other small businesses to develop, market, and maintain internet offerings. . . .” [47 C.F.R. § 8.1(a)]
- ISPs may make these disclosures “via a publicly available, easily accessible website” or may transmit them to the Commission, which will post them to a publicly available, easily accessible website (<https://www.fcc.gov/isp-disclosures>). ISPs must also disclose relevant information at the point of sale.¹ ISPs choosing to submit their required disclosures to the FCC should do so electronically, in a format that is accessible to people with disabilities, in proceeding CG Docket No. 18-142 using the Electronic Comment Filing System (ECFS)

¹ *Restoring Internet Freedom Order*, 33 FCC Rcd 311, 444 n.838 (2017).

(<https://www.fcc.gov/ecfs/filings>). An ISP that does not submit its required disclosure to the FCC through the ECFS portal will be deemed as having elected to provide it on a publicly available, easily accessible website of its choosing. An ISP that submits its required disclosure to the FCC and later elects to provide it on a publicly available, easily accessible website of its choosing should inform the FCC of this change by filing via the FCC portal a clear statement of the change, including the website where consumers can find the required disclosure. [47 C.F.R. § 8.1(a)]

- Specifically, the *Restoring Internet Freedom Order* revised the transparency rule to require ISPs to disclose the following network management practices:
 - *Blocking*. Any practice, other than reasonable network management elsewhere disclosed, that blocks or otherwise prevents end user access to lawful content, applications, service, or non-harmful devices, including a description of what is blocked.
 - *Throttling*. Any practice, other than reasonable network management elsewhere disclosed, that degrades or impairs access to lawful internet traffic on the basis of content, application, service, user, or use of a non-harmful device, including a description of what is throttled.
 - *Affiliated Prioritization*. Any practice that directly or indirectly favors some traffic over other traffic, including through use of techniques such as traffic shaping, prioritization, or resource reservation, to benefit an affiliate of an ISP, including identification of the affiliate.
 - *Paid Prioritization*. Any practice that directly or indirectly favors some traffic over other traffic, including through use of techniques such as traffic shaping, prioritization, or resource reservation, in exchange for consideration, monetary or otherwise.
- ISPs must also continue to disclose, as they have been required to since 2010, the following network management practices, performance characteristics, and commercial terms:
 - *Congestion Management*. Descriptions of congestion management practices, if any. These descriptions should include the types of traffic subject to the practices; the purposes served by the practices; the practices' effects on end users' experience; criteria used in practices, such as indicators of congestion that trigger a practice, including any usage limits triggering the practice, and the typical frequency of congestion; usage limits and the consequences of exceeding them; and references to engineering standards, where appropriate.
 - *Application-Specific Behavior*. Whether and why the ISP blocks or rate-controls specific protocols or protocol ports, modifies protocol fields in ways not prescribed by the protocol standard, or otherwise inhibits or favors certain applications or classes of applications.
 - *Device Attachment Rules*. Any restrictions on the types of devices and any approval procedures for devices to connect to the network.
 - *Security*. Any practices used to ensure end-user security or security of the network, including types of triggering conditions that cause a mechanism to be invoked (but excluding information that could reasonably be used to circumvent network security).
 - *Service Description*. A general description of the service, including the service technology, expected and actual access speed and latency, and the suitability of the service for real-time applications.
 - *Impact of Non-Broadband Internet Access Service Data Services*. If applicable, what non-broadband Internet access service data services, if any, are offered to end users, and whether and how any non-broadband Internet access service data services may affect the last-mile capacity available for, and the performance of, broadband Internet access service.
 - *Price*. For example, monthly prices, usage-based fees, and fees for early termination

or additional network services.

- *Privacy Policies.* A complete and accurate disclosure of the ISP's privacy practices, if any. For example, whether any network management practices entail inspection of network traffic, and whether traffic is stored, provided to third parties, or used by the ISP for non-network management purposes.
- *Redress Options.* Practices for resolving complaints and questions from consumers, entrepreneurs, and other small businesses.

Elimination of Conduct Rules Enacted By The Title II Order

- The Commission eliminated the following rules: the general conduct rule (also referred to as the no unreasonable interference or unreasonable disadvantage standard for Internet conduct), the no blocking rule, the no throttling rule, and the no paid prioritization rule.
- The Commission ended the *Title II Order*'s application of case-by-case regulation to Internet traffic exchange arrangements.

Other Revised Definitions

- **Broadband Internet access service** is defined as a mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up internet access service. [47 C.F.R. § 8.1(b)]
- **Reasonable network management** is defined as a network management practice appropriate and tailored to achieving a legitimate network management purpose, taking into account the particular network architecture and technology of the broadband internet access service. [47 C.F.R. § 8.1(c)]

III. RECORDKEEPING AND REPORTING REQUIREMENTS

The *Restoring Internet Freedom Order* contains new or modified information collection requirements. Specifically, the *Restoring Internet Freedom Order* modified the Transparency Rule to require ISPs to publicly disclose via a "publicly available, easily accessible website" or to the Commission any practice that:

- blocks or otherwise prevents end user access to lawful content, applications, service, or non-harmful devices, including a description of what is blocked;
- degrades or impairs access to lawful internet traffic on the basis of content, application, service, user, or use of a non-harmful device, including a description of what is throttled;
- directly or indirectly favors some traffic over other traffic, including through use of techniques such as traffic shaping, prioritization, or resource reservation, to benefit an affiliate of an ISP, including identification of the affiliate; and
- directly or indirectly favors some traffic over other traffic, including through use of techniques such as traffic shaping, prioritization, or resource reservation, in exchange for consideration, monetary or otherwise.

IV. IMPLEMENTATION DATE

- The *Restoring Internet Freedom Order* and the new transparency rule became effective on June 11, 2018.

V. INTERNET LINKS

A copy of the *Restoring Internet Freedom Order* is available at:
https://apps.fcc.gov/edocs_public/attachmatch/FCC-17-166A1.pdf

A copy of the Federal Register Summary of the *Restoring Internet Freedom Order*, 83 Fed. Reg. 7852

(Feb. 22, 2018) is available at: <https://www.federalregister.gov/documents/2018/02/22/2018-03464/restoring-internet-freedom>

FCC, ISP Transparency Disclosures Portal: <https://www.fcc.gov/isp-disclosures>